

## Dodd-Frank Rules

### Frequently Asked Questions

### Wholesale

<u>Question</u>	<u>Answer</u>
1. What is the effective date of the new requirements on the 3% QM points and fees limit calculation?	The new QM rule is effective for applications taken on or after 1/10/14. For FHA loans, the new QM rule is effective for case numbers pulled on or after 1/10/2014 regardless of the application date.
2. If the QM points and fees limit is 3%, then why is FCM capping broker compensation plans at 2.75%?	Because the calculation is based on the “total loan amount”, not the loan amount/note amount.
3. What is the difference between the “total loan amount” and the loan amount/note amount?	The points and fees threshold applies to the “total loan amount”; this is not the final loan amount on the Promissory Note and/or Security Instrument. Total loan amount is a defined term in Regulation Z that means the “Amount Financed” from the Truth-In-Lending Disclosure Statement <b>minus</b> any real-estate fees (non-finance charges) payable to the lender or affiliate of the lender that are financed. Therefore, the actual limit on points and fees will be less than at first anticipated. For example: <ul style="list-style-type: none"> <li>- \$100,000 loan amount (note amount) with a “total loan amount” of \$98,000 would allow for \$2,940 (\$98,000 x 3%) in points and fees; not \$3,000.</li> </ul>
4. Is FCM’s Underwriting Fee included in the 3% QM points and fees limit calculation?	Yes, if paid by the consumer on a brokered transaction, it is included per 1026.32(b)(1)(i) in the calculation since it is a prepaid finance charge retained by the creditor. However, it is not included if the fee is paid by the seller or creditor through higher rate (via either excess rate credit or locking as “no fee” option with adjustment), since it would no longer be considered a prepaid finance charge.
5. If both the broker compensation on a lender paid transaction and FCM’s Underwriting Fee is included in the 3% QM points and fees limit calculation, then won’t all loans fail the test?	Yes, if the sum of compensation (based on the selected compensation plan) and the FCM Underwriting Fee exceed the limit. Note: A rate credit above the broker’s compensation plan can be used to pay for FCM’s Underwriting Fee, or the loan can be locked as a “No Fee” option (subject to pricing

	adjustment), or the seller can pay this fee in order to exclude from the test.
6. Can we select a different compensation plan for different loan amounts?	No, FCM will not allow lender paid compensation to vary based on different loan amount tiers.
7. Is broker compensation included in the 3% QM points and fees limit calculation even if it is paid by the lender or seller?	Yes, per 1026.32(b)(1)(ii), all compensation paid directly or indirectly to a loan originator is included, regardless of who it is paid by.
8. Is a 3 <sup>rd</sup> party company processing fee included in QM points and fees limit calculation?	No, as long as it is not retained in the whole or part by the creditor, originator or an affiliate of either.
9. On Correspondent transactions, is the SRP included in the QM points and fees limit calculation?	No, since SRP is paid (or charged if negative) as a separate transaction that occurs apart from closing. When a correspondent is acting as the creditor in whose name the loan documents closed and funded the transaction at closing with their own source of funds, it is considered a secondary market transaction gain or loss.
10. Is originator compensation paid to an individual loan originator (i.e., loan officer) included in the 3% QM points and fees limit calculation?	No, per 1026.32(b)(1)(ii)(B-C), compensation paid to an individual originator that is an employee of the creditor or broker is not included.
11. Are all seller paid items excluded from the 3% QM points & fees limit calculation?	Only items that would otherwise be included as prepaid finance charge under 1026.32(b)(1)(i) and are not included in a different section of the regulation are excluded if paid by the seller. For example, while FCM's Underwriting Fee would be excluded if seller paid, broker compensation is included regardless of who pays it under 1026.32(b)(1)(ii), and certain creditor affiliate items are included regardless of who pays them under 1026.32(b)(1)(iii).
12. Are LLPA's included in QM points and fees limit calculation?	Not typically. For brokered transactions, LLPA's (loan level price adjustments) are all adjustments that are made to the base rate sheet price that results in the final adjusted price to consumer. Since the final adjusted price is either credited to the consumer or charged in the form of discount, and LLPA's are not separately and individually charged directly to the consumer, LLPA's will not be included in the QM points and fees calculation.
13. What is a bona fide discount point? And when can it be excluded in the points and fees calculation?	A discount point is "bona fide" if it reduces the consumer's interest rate by an amount that reflects established industry practices, such as secondary mortgage market norms; generally .25% reduction in rate per 1 discount point.  You can exclude up to 2 <i>bona fide</i> discount points if the interest rate before the discount does not exceed

	<p>the APOR for a comparable transaction by more than 1 percentage point; or</p> <p>Exclude up to 1 <i>bona fide</i> discount point if the interest rate before the discount does not exceed the APOR for a comparable transaction by more than 2 percentage points.</p>
14. Will FCM exclude discount points paid by seller?	Yes, FCM will allow seller paid discount points to be excluded from the points and fees total for purposes of QM and HOEPA High Cost threshold testing.
15. What options do we have if a loan fails the QM test?	<p>FCM will not close or fund a loan that fails the 3% QM points and fees limit calculation. Therefore, options to resolve this prior to closing may include: Broker reducing compensation on consumer paid broker transactions, correspondent reducing fees on a correspondent transaction.</p> <p>If the loan initially fails the test at setup, an opportunity to make an adjustment (i.e. changing to lender or borrower paid, reduce fees) may be allowed in order to comply with the test.</p>
16. Can fees charged by the creditor on a correspondent transaction exceed 2.75%?	No, the total points and fees for the loan, including all creditor fees paid by the consumer as well as affiliate or other items that must be included, may not exceed the threshold applicable under the QM points and fees limit.
17. How will you treat borrower costs paid by the seller or creditor/lender?	Creditor paid charges are excluded from points and fees. Seller paid fees are included if the fee falls under sections 1026.32 (b)(1) ii – iv. Seller paid charges under section 1026.32 (b)(1) (i) are not included in the points and fees.
18. Will the Debt Ratio for all loans be limited to 43% under the new ATR/QM Rule?	Due to the temporary exemptions in the regulation, eligible VA, USDA and Fannie/Freddie Conventional loans are not subject to the 43% limitation on debt ratio in order to be eligible as a QM (but must still comply with the points and fees limit). Due to the recent HUD QM rules, FHA loans will not be subject to the 43% limitation on debt ratio.
19. Will an FHA Streamline or VA IRRRL with no income documentation still qualify under the ATR rule?	Yes, per 1026.43(e)(4)(ii)(B-C), any loan eligible to be insured by HUD(FHA) or guaranteed by VA is considered a QM and complies with ATR requirements.
20. When refinancing an FHA loan and the payoff includes a full month interest, is this considered a prepayment penalty that would be included in the QM points and fees limit calculation?	No, per 1026.32(b)(6), FHA monthly interest accrual is not considered a prepayment penalty.

21. What is an example of an “affiliate”?	The Qualified Mortgage Rule 1026.32(b)(5), points to the Bank Holding Act of 1956 as the definition of an affiliated relationship; generally this is defined as 25% or more ownership. See the Points and Fees Matrix for more information on affiliates.
22. How will FCM know if I have any affiliates?	FCM will require rep and warrant disclosure of any affiliation arrangement meeting the above definition by any business partner on a loan-level basis on all wholesale, brokered and correspondent transaction. In addition, FCM will require rep and warrant disclosure of any affiliation arrangement meeting the above definition by the closing agent on a loan-level basis, prior to loan funding.
23. If I have an affiliate, what does that mean for the points and fees test?	If there is an affiliate relationship with a creditor, an affiliate of the creditor or an affiliate of the broker on a loan closing, the portion of the fees that is paid to the affiliate and kept by the affiliate is counted in the points and fees calculation.
24. Is Hazard Insurance included in the points and fees test if paid to an affiliate of the creditor or broker?	Amounts collected for Hazard Insurance and retained by an affiliate of the creditor or affiliate of the broker should be included in points and fees if the amount is placed into an escrow account. If the fee is not escrowed, or is not retained by the creditor affiliate, it should not count toward points and fees.
25. Does the ATR/QM rule and points and fees limit apply to 2 <sup>nd</sup> homes and investment properties?	Yes, Per 1026.43(a), it applies to any transaction secured by a dwelling, which is defined in 1026.2(a)(19) as any residential structure that contains 1-4 units. Further commentary to 1026.2(a)(19) clarifies that second and/or vacation homes may be included. Further, due to secondary investor requirements and since not all investment property loans are business/investment purposes (some are non-owner occupied transactions that cannot fit into the agency definition of primary residence or second home), FCM will impose these rules on all transactions at this time.
26. Will HPML loans be eligible to be QM’s and will FCM close them?	Yes, currently under ATR/QM regulations, there are two categories of QM’s – “safe harbor” and “rebuttable presumption”. A loan which meets all the other requirements of QM standards, but that is considered a higher priced mortgage loan, falls under

	<p>the rebuttable presumption category. Rebuttable Presumption loans will be subject to a <u>minimum Residual Income test</u>. At this time, FCM will continue to close both categories of loans. Additionally HUD has published their guidelines for Rebuttable Presumption loans and they are different than the guidelines for HPML. This means you could have a case where a loan is an HPML loan per Federal-statute and a Safe Harbor QM loan per HUD. Federal HPML rules will still apply in this case.</p>
<p>27. Can my compensation plan vary between borrower paid and lender paid plans?</p>	<p>It depends; FCM will not allow borrower paid compensation to exceed the lender paid compensation amount that you have selected in your compensation agreement. However, FCM will allow your borrower paid compensation to be less than your lender paid compensation.</p>
<p>28. The changes to the LO Compensation rules now permits a Broker/LO to contribute their commission for an unforeseen expense, will FCM allow this?</p>	<p>At this time, FCM does not plan on allowing an LO or Broker to use part of their commission on lender paid transactions. FCM will allow the LO/Broker to credit part of their commission to the borrower on borrower paid transaction.</p>
<p>29. Does FCM allow PMI to be excluded from Points and Fees?</p>	<p>PMI premiums may only be excluded if they are monthly or if the up-front PMI premium is refundable on a pro rata basis and does not exceed the upfront MIP for FHA loans. At this time, Conventional Single Premium PMI does not meet the CFPB requirements; therefore, it may not be excluded even if paid for by premium pricing or seller credit.</p>
<p>30. Does the LO have to provide a Disclosure of Home Ownership Counseling Organization List?</p>	<p>FCM requires the borrower be provided with either a list of homeownership counseling organizations or a disclosure containing a link to the counseling organization list within 3 days of application. Note: The disclosure containing a link to the counseling organization list is only allowed if the broker is presently working on systems to generate the list automatically.</p>